UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/531,703	03/20/2000	Suresh Kumar	23984-13950	6170

758 7590 09/29/2010

FENWICK & WEST LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041

EXAMINER	
POINVIL, FRANTZY	
ART UNIT	PAPER NUMBER
3691	

NOTIFICATION DATE	DELIVERY MODE
09/29/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PTOC@Fenwick.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SURESH KUMAR

Appeal 2009-014027
Application 09/531,703
Technology Center 3600

Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and JOSEPH A. FISCHETTI, *Administrative Patent Judges.*

CRAWFORD, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

---

[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellant seeks our review under 35 U.S.C. § 134 (2002) of the Examiner's final decision rejecting claims 1 to 6, 8 to 32, and 40 to 47. We have jurisdiction over the appeal under 35 U.S.C. § 6(b) (2002).

BACKGROUND

Appellant's invention is directed to a method and system for bidding on multiple auctions (Spec. 1).

Claim 1 is illustrative:

> 1. A method performed by a computer system for bidding on auctions, the method comprising:
>
> receiving an indication of a plurality of auctions;
>
> receiving an indication of a bidding technique to apply to the indicated auctions; and
>
> participating in some of the indicated auctions in accordance with the indicated bidding technique.

Appellant appeals the following rejections:

Claims 1, 10, 33, and 40 under 35 U.S.C. § 102(e) as anticipated by Ausubel (US 6,021,398, iss. Feb. 1, 2000).

Claims 2 to 6, 8, 9, 11 to 32, 34 to 39, and 41 to 47 under 35 U.S.C. § 103(a) as unpatentable over Ausubel.

ISSUES

Did the Examiner err in rejecting the claimed subject matter because Ausubel fails to discloses receiving an indication of a plurality of auctions and an indication of a bidding technique?

Did the Examiner err in rejecting claims 8, 13 to 16, 20, 27, 29, 30, 43 and 44 because Ausubel does not disclose or suggest taking an action at one auction based on the result of another auction that has ended?

Did the Examiner establish the obviousness of claims 4, 6, 12, 17, 18, 21, 24 to 26, 32, 46?

FACTUAL FINDINGS

We adopt all of the Examiner's findings in regard to the teachings of Ausubel related to claims 1, 10, 23, and 40 as our own. (Ans. 3). In addition, we find that Ausubel discloses that contingent bids may be made (col. 11, ll. 34 to 35).

Appellant disclose that in one bidding technique and bid may be contingent (Spec. 5).

The Appellant presented as evidence (submitted Aug. 19, 2005 as an attachment to an Amendment After Final Rejection, and again with the Appeal Brief filed Jul. 14, 2006) Vijay Krishna, *Auction Theory*, 165-66 (2002) (hereinafter "*Auction Theory*"), which states:

> when multiple objects are to be sold, many options are open to the seller. First, the seller must decide whether to sell the objects separately in *multiple auctions* or jointly in a *single auction*. In the former case, the objects are sold one at a time in separate auctions—conducted sequentially, say—in a way that the bids in the auction for one

> of the objects do not directly influence the outcome of the auction for another. In the latter case, the objects are sold at one go in a single auction, but not necessarily all to the same bidder, and the bids on the various objects collectively influence the overall allocation . . . . if the seller decides to sell the objects one at a time in a sequence of single-object auctions . . . .

(*Id.* at 165-66).

ANALYSIS

Multiple auctions

The Appellant's argument that Ausubel does not disclose multiple auctions as claimed is unconvincing. We agree with the Examiner that auctions on different objects or items may be considered different auctions, i.e. single/separate auctions for each item. As such, when the claims are given their broadest reasonable interpretation, the recitation of "a plurality of auctions" is broad enough to include the auctioning of different items disclosed in Ausubel. We have considered the evidence submitted by the Appellant. Specifically, we have considered the pages of *Auction Theory* submitted by the Appellant. *Auction Theory* teaches that a seller seeking to sell a plurality of objects has the choice of selling the items in multiple auctions or in a single auction. *Auction Theory* states that in a multiple auction, the objects are sold one at a time in separate auctions, conducted sequentially. This teaching does not preclude the interpretation advanced by the Examiner that an auction is a way of selling an item, based on the highest bidder and therefore the selling of one item in this way is an auction. The Examiner is of the opinion that the selling of multiple items to the

highest bidder is a multiple auction as broadly claimed. This interpretation by the Examiner comports with the definition of the word "auction" found in the online version of *Merriam Webster's Dictionary* as "a sale of property to the highest bidder" (http://www.merriam-webster.com/dictionary/auction) (last visited Sep. 14, 2010). Therefore, the sale of each item to the highest bidder is an auction and the sale of multiple items is multiple auctions.

To the extent that the Appellant is arguing the Ausubel does not disclose receiving an indication of a bidding technique to apply to the auctions, we agree with the Examiner that as Ausubel discloses a plurality of auctions and bidding rules to apply to the auctions, Ausubel discloses this step of Appellant's method. We note that Ausubel discloses that a contingent bid may be made which is one of the bidding techniques disclosed by the Appellant.

In view of the foregoing, we will sustain the Examiner's rejection of claim 1 under 35 U.S.C. § 102(e). We will also sustain the Examiner's rejection of claims 10 and 40 for the same reasons. We will sustain the Examiner's rejection of claim 33 because the Appellant does not address the separate patentability of this claim.

Obviousness

Claims 8, 13 to 16, 20, 27, 29, 30, 43, and 44 recite in various ways that a bidding technique in which a bidder takes action on a second auction based on the result of a first auction. The Examiner has not addressed the specific recitations of these claims. Rather the Examiner offers a general statement that bidding at an auction only after winning another auction, as is

recited in claims 8 and 13, would have been obvious to one of ordinary skill in the art because a bidder would have enough funds to use to apply at another auction.

It is not clear why winning an auction would result in a bidder having enough funds to use to apply to another auction. After winning an auction, a bidder would have fewer funds available to apply to another auction because a bidder has paid for the item won. Although, the Examiner may be correct that a bidder may have the opportunity to place more than one bid on one or more different items, the Examiner has not established that the specific recitation of claims 8, 13 to 16, 20, 27, 29, 30, 43, and 44 would have been obvious.

For instance, claim 14 recites that a bidder bids at multiple auctions in response to winning an auction, claim 20 recites basing a decision to bid at an auction based on results of another auction, claim 27 recites bidding at a certain number of other auctions upon winning a certain number of auctions. We agree with the Appellant that the Examiner has not established the obviousness of these claims by the general statement that during an auction, a bidder may have the opportunity to place more than one bid on one or more different items.

The Examiner points to no interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace as support for his conclusion that there existed at the time of the invention an apparent reason to modify the method of Ausubel so as to include the recitations of claims 8, 13 to 16, 20, 27, 29, 30, 43, and 44. *See KSR Int'l Co. v. Teleflex, Inc.*, 550 U.S.398, 418 (2007); *see also In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds

cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness").

As such, we find that the Examiner has failed to set forth a prima facie case of obviousness, and we cannot sustain this rejection of claims 8, 13 to 16, 20, 27, 29, 30, 43, and 44. The Examiner has also not specifically addressed the recitations of claims 2 to 6, 9, 11, 12, 17 to 19, 21 to 26, 28, 31, 32, 34 to 39, 41, 42, and 45 to 47. Therefore, we will not sustain the rejection as it is directed to these claims.

DECISION

We AFFIRM the Examiner's § 102(b) rejection of claims 1, 10, 33, and 40 as anticipated by Ausubel.

We REVERSE the Examiner's § 103(a) rejection of claims 2 to 6, 8, 9, 11 to 32, 34 to 39, and 41 to 47 as unpatentable over Ausubel.

TIME PERIOD

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1) (2007).

AFFIRMED-IN-PART

hh

FENWICK & WEST, LLP
SILICON VALLEY CENTER
801 CALIFORNIA STREET
MOUNTAIN VIEW, CA 94041